



***Substitute Senate Bill No. 764***

***Public Act No. 09-48***

***AN ACT CONCERNING DERIVATIVE FINANCIAL TRANSACTION CONTROLS.***

Be it enacted by the Senate and House of Representatives in General Assembly convened:

Section 1. Section 38a-102 of the general statutes is repealed and the following is substituted in lieu thereof (*Effective from passage*):

(a) Except as otherwise limited or prohibited by sections 38a-102 to 38a-102h, inclusive, as amended by this act, or by regulation adopted by the Insurance Commissioner pursuant hereto, a domestic insurance company may make or acquire such investments as are prudent in respect of the business of said insurance company and diversification considerations.

(b) Eligibility of an investment shall be determined at the time of its making or acquisition. Any instrument, including any extension or modification thereof, or collateral taken by a domestic insurer as a result of adverse financial circumstances affecting an investment shall not be considered a new investment for purposes of sections 38a-102 to 38a-102h, inclusive, as amended by this act.

(c) Any investment limitation based on the amount of an insurance company's admitted assets or capital and surplus shall relate to such assets or capital and surplus as shown by the insurance company's

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annual statement as of December thirty-first next preceding the date of acquisition.

(d) In the case of a domestic life insurance company, the investment limitations set forth in section 38a-102c shall apply to a separate account only to the extent that reserves for guarantees with respect to (1) benefits guaranteed as to dollar amount and duration or (2) funds guaranteed as to principal amount or stated rate of interest are held in a separate account in accordance with subsection (a)(iii) of section 38a-433. [(a)(iii).]

(e) Any limitation or prohibition appearing in sections 38a-102 to 38a-102h, inclusive, as amended by this act, shall apply only with respect to the section in which it appears and shall not constitute a general prohibition applicable to any other section unless specifically stated. The qualification or disqualification of an investment under one section shall not prevent its qualification in whole or in part under another section and an investment authorized by more than one section may be held under whichever authorizing section the company first elects.

(f) (1) A domestic insurance company doing business in this state may enter into derivative financial transactions, including swaps, options, forwards, futures, caps, floors and collars or similar instruments or combinations thereof, in accordance with subsection (a) of this section. Any such company shall include with its audited financial report a statement by the independent certified public accountant conducting such audit that describes such accountant's assessment of the internal controls of such company relative to such transactions.

(2) If the independent certified public accountant determines the internal controls relative to such derivative financial transactions to be deficient, such company shall include with the statement set forth in

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subdivision (1) of this subsection such accountant's report of such deficiencies and a description of remedial actions taken or proposed to be taken to correct such deficiencies, if such actions are not already described in the accountant's assessment.

~~[(f)]~~ (g) The provisions of sections 38a-102 to 38a-102h, inclusive, as amended by this act, shall not apply in whole or in part to any activity which the Insurance Commissioner shall exempt therefrom as consistent with ~~[his]~~ the purpose of preserving the financial integrity of insurance companies for their policyholders. The Insurance Commissioner may adopt such regulations, in accordance with chapter 54, as ~~[he]~~ the commissioner deems necessary ~~[in accordance with chapter 54]~~ to carry out the purposes of sections 38a-102 to 38a-102h, inclusive, as amended by this act.

Sec. 2. Section 38a-102b of the general statutes is repealed and the following is substituted in lieu thereof (*Effective from passage*):

For the purposes of sections 38a-102 to 38a-102h, inclusive, as amended by this act:

~~[(a)]~~ (1) "Cap" means an option contract wherein the seller, in return for a premium, agrees to limit the purchaser's risk associated with an increase in a reference rate or index.

~~(2)~~ "Collar" means a contract that combines a cap and a floor.

~~(3)~~ "Exempted country" means a foreign jurisdiction rated in one of the two highest rating categories by an independent, nationally recognized United States rating agency.

~~(4)~~ "Floor" means an option contract wherein the seller, in return for a premium, agrees to limit the purchaser's risk associated with a decline in a reference rate or index.

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[(b)] (5) "Foreign obligations and investments" with respect to any single country means the obligations of the government of such country and political subdivisions, agencies and instrumentalities thereof together with obligations of and investments in entities created under the laws of that country, or a political subdivision thereof, and real estate and other tangible assets located in that country. Obligations issued, assumed or guaranteed by any institution created under the laws of the United States or any state thereof are not foreign obligations and investments.

(6) "Forward" means a contract, other than a future, between two parties that commits one party to purchase and the other to sell the instrument or commodity underlying the contract on a specified future date.

(7) "Future" means a standardized forward contract traded on a United States or qualified foreign exchange.

[(c)] (8) "High yield obligations" means obligations [which] that are not rated as investment grade by any nationally recognized United States rating agency or the National Association of Insurance Commissioners.

[(d)] (9) "Institution" [includes] means business trusts, corporations, joint stock associations, partnerships and other legal entities organized under the laws of the United States, or any state or territory of the United States, but [it shall] does not include agencies, authorities, or instrumentalities of or entities sponsored by the United States, its possessions or territories.

[(e)] (10) "Insurance company" [shall have the] has the same meaning as [set forth] provided in section 38a-1 and [shall include] includes fraternal benefit societies as defined in section 38a-595 and health care centers as defined in section 38a-175, but [it shall] does not

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include agencies, authorities or instrumentalities of the United States, its possessions and territories, the Commonwealth of Puerto Rico, the District of Columbia or a state or political subdivision of a state.

[(f)] (11) "Nonadmitted investment assets" means nonadmitted assets excluding real and personal property used in insurance business operations.

[(g)] (12) "Obligations" includes bonds, debentures, notes and other evidences of indebtedness.

(13) "Option" means a contract that gives the purchaser the right, but not the obligation, to enter into a transaction with the seller for option rights on terms specified in the contract.

[(h)] (14) "Subsidiary" or "subsidiaries" [shall have the] has the same meaning as [set forth] provided in section 38a-1 [but] except that the term "controlled by", as used in said section, [shall have] has the same meaning as [set forth] provided in section 38a-129. [, provided, however, that for] For the purposes of sections 38a-102 to 38a-102h, inclusive, as amended by this act, a person may rebut the presumption of control used to define a subsidiary by providing written notice to the commissioner of [its] such person's intent to disavow control notwithstanding the direct or indirect ownership, control or holding with the power to vote, or holding of proxies representing ten per cent or more but less than a majority of the voting securities or voting power of any other person. Control shall be conclusively presumed to exist under [said] sections 38a-102 to 38a-102h, inclusive, as amended by this act, if any person, directly or indirectly, owns, controls, holds with the power to vote, or holds proxies representing over fifty per cent of the voting securities or voting power of any other person.

(15) "Swap" means a contract to exchange, for a period of time, the investment performance of one underlying instrument for the

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investment performance of another underlying instrument without  
exchanging the instruments themselves.

Approved May 20, 2009